



Federal Aviation Administration
Office Of The Chief Counsel
Office Of Dispute Resolution For Acquisition (ODRA)

Alternative Dispute Resolution Agreement
For Mediation Of [Protest/Contract Dispute] of [Protester/Contractor], [against
Screening Information Request (SIR)] [Under Contract] No. _____.
Issued by the Federal Aviation Administration - _____ Region.

ODRA Docket No. _____

1. Background.

The Federal Aviation Administration (FAA) Office of Dispute Resolution for Acquisition (ODRA) is independent of FAA organizations responsible for procurement actions. The ODRA has been provided broad discretion by the Administrator of the FAA to promulgate rules of procedure and to utilize a variety of alternative dispute resolution (ADR) techniques to resolve both procurement protests and contract disputes.

2. Agreement to Mediate

The parties hereto hereby agree to utilize one form of ADR, mediation, in order to attempt to resolve their differences in the instant **[protest/contract dispute]**. The parties shall therefore present their respective positions and supporting evidence to a Neutral Mediator, and shall work to achieve a settlement of the dispute through direct negotiation, using the Neutral Mediator to advise and counsel the parties during the process of arriving at a settlement. The ODRA shall administer the mediation, but shall not participate in the mediation. Should the parties not be able to arrive at an amicable settlement via mediation, any remaining unsettled matters shall be resolved via the ODRA's Default Adjudicative Process..

3. Designation of Neutral Mediator

The parties hereby agree that the ODRA Director **[will designate a Dispute Resolution Officer (DRO) on the ODRA staff or, if agreed to by the parties and the**

Director, a non-FAA Neutral who may be made available under an existing interagency or neutral sharing arrangement][will refer the matter to _____, a Compensated Neutral selected and mutually agreed upon by the parties, whose fees and costs the parties will share equally and] who will serve as the Neutral Mediator in this [protest/contract dispute].

4. Procedures and Groundrules for the Conduct of The Mediation.

The agreed-upon procedures and groundrules for the conduct of this mediation are set forth in Appendix 1, which is attached hereto and made part of this ADR Agreement. The Neutral Mediator shall have broad discretion to administer those procedures in the interests of efficiency, effectiveness, and a fair resolution of the issues in controversy.

During the pendency of this matter before the Neutral Mediator, the ODRA Director may review the progress of mediation status with the Neutral Mediator, but shall not be privy to the subject matter of any specific settlement terms, unless the parties agree thereto.

In providing any guidance and evaluation of the merits of the case, the Neutral Mediator will apply the principles of the FAA Acquisition Management System and applicable law. The Neutral Mediator will have broad discretion in recommending compromises, resolutions or advice in arriving at a settlement agreement.

5. Counterparts.

This Agreement may be executed in any number of copies, each of which shall be deemed to be a counterpart original.

FEDERAL AVIATION ADMINISTRATION:

By _____
[Principal's Name and Title]

Date: _____

[Name of Protester/Contractor]:

[Principal's Name and Title]

Date: _____

NEUTRAL MEDIATOR

[Name and Title]

Date: _____

APPROVED:

Anthony N. Palladino, Director
Office of Dispute Resolution for Acquisition

Date: _____

Appendix 1

to

**Alternative Dispute Resolution Agreement
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Issued by the Federal Aviation Administration - _____ Region.**

[ODRA Docket No. _____]

Procedures and Groundrules for Mediation

1. The parties agree to attempt to resolve the dispute by using a Neutral Mediator who shall assist the parties in reaching the settlement of the dispute by facilitating negotiations between or among them. The Neutral Mediator shall participate impartially in the negotiations, and shall advise and consult with the parties involved.
2. The Neutral Mediator shall have no financial or personal interest in the result of the mediation. A prospective Neutral Mediator shall disclose to the parties and to the FAA Office of Dispute Resolution for Acquisition (ODRA), prior to accepting his or her appointment, any circumstance likely to create a conflict of interest or presumption of bias or to prevent a prompt meeting with the parties. Upon receipt of such information, the ODRA Director, at the request of either party, shall promptly designate a replacement Neutral Mediator – either a member of the ODRA staff or a replacement Compensated Neutral agreeable to all parties.
3. If, during the course of mediation, any Neutral Mediator shall become unwilling or unable to serve, the ODRA Director will appoint another Neutral Mediator, unless the parties agree otherwise.
4. A party shall choose its own representatives for participation in the mediation proceedings. A principal representative must be designated by each party. The principal representative shall have authority to enter into a settlement agreement on behalf of his/her party. The parties shall keep the numbers of other representatives to a minimum, and shall consult with the Neutral Mediator in this regard. The names and titles of all such representatives shall be communicated in writing to all parties and to the ODRA.
5. The Neutral Mediator shall, upon consultation with the parties, fix the date, time and place of each mediation session. Mediations may be conducted via telephone conference, as needed.

6. At least five days prior to the first scheduled mediation session, each party shall provide the Neutral Mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the Neutral Mediator, the memoranda may be exchanged by the parties in advance of the mediation session.

7. The Neutral Mediator may, at any time in advance of mediation sessions, require the parties to produce and deliver to him/her (and to serve copies on the other parties) all information and documentation the Neutral Mediator determines is reasonably needed for him/her to understand the issues presented and the respective positions of the parties.

8. The parties agree that the Neutral Mediator is authorized to conduct joint meetings with all parties as well as separate meetings with individual parties and to make oral and written recommendations for settlement. The Neutral Mediator shall not have the authority to impose a settlement on the parties.

9. Whenever necessary, the Neutral Mediator may obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the Neutral Mediator or the parties, as the Neutral Mediator shall determine.

10. The expenses of any experts or witnesses appearing for either side shall be paid by the party producing such persons. All other expenses of the mediation, including required traveling and other expenses of the Neutral Mediator and any representative of the ODR and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the Neutral Mediator, shall be borne equally by the parties unless they agree otherwise.

11. The parties agree that they and their representatives shall treat the mediation process hereunder as confidential. Persons other than the parties and their designated representatives may attend mediation sessions or otherwise participate in the process only by mutual agreement of the parties and with the consent of the Neutral Mediator. Information disclosed in the course of the mediation and all records, reports, or other documents exchanged by the parties or provided to the Neutral Mediator as part of the mediation process shall be considered as privileged and confidential settlement communications pursuant to Rule 408 of the Federal Rules of Evidence and the Administrative Disputes Resolution Act of 1996, 5 U.S.C. §574. All such information and documents shall not be divulged by the parties or by the Neutral Mediator, except as agreed upon by all parties, unless compelled to do so by law or court order. Neither party may use such information or documents for any purpose other than for the pursuit of settlement hereunder. In particular, the parties agree that they shall not rely on, or introduce any of the following matters as evidence in any arbitral, administrative, judicial, or other proceeding:

(a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute;

(b) admissions made by another party in the course of the mediation proceedings;

(c) proposals made or views expressed by the Neutral Mediator; or

(d) the fact that a party had or had not indicated willingness to accept a settlement proposal advanced by the other party or the Neutral Mediator.

12. The parties further agree on behalf of themselves and their officers, employees, attorneys and representatives that none of them shall call upon or subpoena the Neutral Mediator in any legal, arbitral or administrative proceeding of any kind to testify, or to produce any notes, files or documents in any way created in connection with the mediation process hereunder. In no event shall the Neutral Mediator voluntarily testify on behalf of either party or third person in connection with the matters to be resolved by mediation hereunder.

13. If a protective order has not already been issued by the ODRA, any party may, at any time during the course of the mediation, request that the ODRA issue such an order, in order to protect from disclosure confidential and proprietary competitive business information or Government source selection information.

14. Unless the parties agree otherwise, there shall be no stenographic record of the mediation process.

15. Notwithstanding the provisions of the foregoing paragraphs 11 through 14, evidence otherwise admissible or discoverable shall not be rendered inadmissible or undiscoverable because of its use in the mediation process hereunder. If a settlement is reached pursuant to mediation hereunder, any information disclosed or documents created or exchanged in settlement discussions or during the mediation process may be used within the parties' respective organizations in order to explain and document the settlement. It is expressly understood that neither this agreement nor any settlement agreement will be confidential.

16. The parties agree that the mediation shall be terminated when one of the following occurs:

(a) the execution of a settlement agreement by the parties;

(b) the Neutral Mediator makes a written declaration to the parties and to the ODRA Director that further efforts at mediation are no longer worthwhile; or

(c) a party makes a written declaration to the Neutral Mediator and to the ODRA Director that the mediation proceedings are terminated.

17. The parties agree that the Neutral Mediator is required to end the mediation and to so notify the ODRA Director whenever, in the judgment of the Neutral Mediator, further mediation efforts will not contribute to a resolution of the dispute between the parties.

Should the matter in controversy have to be resolved by the ODRA's default adjudicative process, the Neutral Mediator shall not take part in that process.

18. The Neutral Mediator shall interpret and apply the terms of this Alternative Dispute Resolution Agreement and the foregoing groundrules, insofar as such terms and groundrules relate to the Neutral Mediator's duties and responsibilities. All other terms and groundrules shall be interpreted and applied by the ODRA Director.